

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**LARRY G. PHILPOT,**  
**Plaintiff,**

**v.**

**Civil Action No. 1:20-cv-4121**

**BLACKBIRD PRODUCTION  
PARTNERS, LLC,**

**Defendant.**

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**PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND**

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Plaintiff Larry G. Philpot (“Philpot” or “Plaintiff”) files this Original Complaint and Jury Demand against Defendant Blackbird Production Partners, LLC (“Blackbird Production” or “Defendant”) on personal knowledge as to all facts regarding himself and on information and belief as to all other matters, as follows:

**I.**

**PRELIMINARY STATEMENT**

A professional photographer’s ability to envision, and then immediately capture the entire scene—including non-visuals such as emotions—is what differentiates their photographs from an amateur’s photographs. These works extend well beyond the four corners of the photograph to evoke sentiments within the viewer so that the viewer is forever a part of the moment captured in time. For concert photographers, the odds are almost always against them—the musicians are constantly moving, the lighting is usually dark and typically changing, and it is practically

impossible to secure a good vantage point. But every now and then, a photographer captures a great shot, the kind of iconic shot that makes the viewer forever a part of that very moment in time.

Larry Philpot, an experienced freelance photographer, has honed the art of capturing these rare moments in time. Philpot created a photograph of Jeff Tweedy during a concert. This photograph is the type of awe-inspiring work that launches a successful photography career. Recognizing this, Philpot offered the photograph under a Creative Commons license, permitting members of the public to use the photograph provided that it is properly attributed to Philpot. In doing so, Philpot carefully marketed his sought-after product while still protecting the quality and his rights in his work.

Defendant Blackbird Production copied and posted Philpot's photograph of Jeff Tweedy onto its website as its own, thereby infringing on Philpot's copyrighted work. In freelance photography, the reputation and licensing revenue guarded by copyright law are a photographer's sole means to support their career. Blackbird Production stole both of those from Philpot. Larry Philpot brings this action to protect not just his rights under copyright law, but also his photography business.

## **II.**

### **PARTIES**

#### **A. Plaintiff**

1. Plaintiff Larry G. Philpot is a citizen and resident of the State of Indiana. Philpot is a renowned freelance professional photographer who specializes in photographing concerts and musical performances across the United States.

**B. Defendant**

2. Defendant Blackbird Production Partners, LLC is a Delaware corporation with its principal place of business in New York and resides in New York County. Blackbird Production may be served via Keith Wortman, at 350 Park Avenue, 14th Floor, New York, New York 10022.

**III.**

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this civil action presents a federal question as Plaintiff presents a civil claim arising under the Constitution, laws, or treaties of the United States.

4. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) because this civil action arises under an Act of Congress relating to copyrights, namely the Copyright Act of the United States, 17 U.S.C. § 101, et seq.

5. This Court has personal jurisdiction over Defendant Blackbird Production Partners, LLC because it conducts business and resides in the State of New York.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant Blackbird Production Partners, LLC resides and may be found in this District.

**IV.**

**FACTUAL BACKGROUND**

**A. The Highly Competitive World of Freelance Concert Photography**

7. To say that concert photography is a tough business is a severe understatement. It requires artistic skills, business skills, and interpersonal skills. Before having the opportunity to even take a photo, concert photographers must invest in expensive equipment and negotiate to obtain access to the concert stage. At the concert, they must battle all the variables that arise from an uncontrolled setting—a rowdy crowd, horrible lighting that is always changing, and musicians

constantly moving. Not to mention, it is really loud. As a result, despite all of their efforts and hard work, concert photographers often take photographs that are entirely unusable, where the rock stars appear as blurs and washy blobs.

8. Financially, concert photography can be a high-risk business venture. Freelance concert photographers earn money when they license or sell their work product and from photography engagements. If the photographs are unusable, which is often the case, or simply aren't good, then the photographers do not receive any type of payment and are unable to expand their portfolio—which is necessary to obtain additional business.

9. And, in today's technological age where anyone with a smart phone can take pictures at concerts, concert photography is becoming significantly more competitive, making it even more imperative to capture the perfect shot. Because that is all that there is demand for—a few once-in-a-lifetime shots for each star. It doesn't matter if a concert photographer takes 100 good shots of a star at a concert—an article about Jeff Tweedy, for example, only needs one picture of Jeff Tweedy—the best one.

10. In such a cutthroat environment, it is essential that concert photographers receive the compensation and credit to which they are entitled, but also need to advance their business.

11. Each and every instance where a photographer does not receive proper attribution, or his work is misattributed, decreases the value of that photograph and the overall value of the photographer's portfolio.

**B. Larry Philpot: A Professional Concert Photographer**

12. Larry Philpot is a renowned freelance photographer who specializes in taking photographs of musicians at concerts and other performances. Philpot has distinguished himself from amateur photographers by creating a highly coveted portfolio that demands legal protection to preserve its standard.

13. He has spent years perfecting his craft, and his photography business includes licensing his works and photography engagements.

14. Philpot is known for the unparalleled quality of his work. He employs photography techniques that involve precise angles, timing, assessment of light, and other creative approaches that he has worked tirelessly to develop. At a concert, Philpot has the uncanny ability of connecting with the artist from the crowd. In addition, to ensure the highest quality photographs, Philpot uses state of the art equipment. He has invested tens of thousands of dollars in equipment.

15. He has established a strong reputation for himself and his work, and due to his professional reputation, he often obtains privileged access to take photographs of musical performers at concerts. Indeed, there are over one hundred instances where Philpot has received press credentials.

16. There is an extensive market and a demand for Philpot's photos that includes, but is not limited to, the musicians themselves, the musicians' fans, record labels, talent agencies, editorial organizations, media entities, radio stations, website operators, and concert and event planners. Philpot has been very successful in this market.

17. Philpot understands that part of being a professional photographer is to market your works to gain widespread exposure, and that the high use of his photographs has required licensing agreements and copyright protections.

18. Philpot has entered into license agreements with Tom Petty and the Heartbreakers for his photographs.

19. Philpot has also licensed his work to various musicians in exchange for attribution including, but not limited to, the musicians Kid Rock and Paul Stanley of KISS.

20. Further, Philpot has previously licensed several of his photographs through a stock photography agency called “Corbis” and its affiliate “Splash.” Philpot received monetary compensation through Corbis and Splash for licenses for photographs he took of Prince, Madonna, Fleetwood Mac, and the 2015 Indianapolis 500 Race and Winner.

21. Philpot has also been engaged as a photographer by Hoosier Park LLC d/b/a Hoosier Park Racing & Casino to photograph “meet and greets” between celebrities and fans.

22. Philpot’s portfolio and reputation as a premier photographer are critical to his business. The more his photographs are viewed with proper attribution, the more access he can obtain to take celebrity photographs, and the more he can command in licensing fees.

**C. Philpot Creates the Jeff Tweedy Photograph**

23. On October 2, 2010, Philpot created a photograph of Jeff Tweedy in Milwaukee, Wisconsin (the “Jeff Tweedy Photo”). A true and correct copy of the Jeff Tweedy Photo is attached as Exhibit A.

24. The Jeff Tweedy Photo is an original work that Philpot registered with the United States Copyright Office as part of a collection of photographs on May 17, 2013. The Jeff Tweedy Photo is registered with the United States Copyright Office under Certificate Number VAu 1-164-648. A copy of the copyright registration certificate for the Jeff Tweedy Photo is attached as Exhibit B.

25. As the owner of the copyright in the Jeff Tweedy Photo, Philpot has the exclusive rights to (1) reproduce the Jeff Tweedy Photo in copies, (2) prepare derivative works based on the Jeff Tweedy Photo, (3) distribute copies of the Jeff Tweedy Photo to the public by sale or other transfer of ownership, or by rental, lease, or lending, and (4) display the Jeff Tweedy Photo publicly.

26. Philpot first displayed the Jeff Tweedy Photo on October 4, 2013 on the Wikimedia website. The original photo can be found at [http://commons.wikimedia.org/wiki/File:Jeff Tweedy.jpg](http://commons.wikimedia.org/wiki/File:Jeff_Tweedy.jpg). A copy of this webpage as it existed on July 31, 2018 with the Jeff Tweedy Photo is attached as Exhibit C.

**D. The Creative Commons License**

27. A Creative Commons license is a simple, standardized copyright license that anyone can use to license their work. The copyright holder designates their work as governed by a Creative Commons license, and anyone may use the work provided they adhere to the terms of the license.

28. In an effort to market his freelance photography practice, Philpot offered the Jeff Tweedy Photo through Wikimedia for distribution, public display, and public digital performance under a Creative Commons Attribution-ShareAlike 3.0 Unported Generic license (abbreviated as “CC BY-SA 3.0”). A copy of the CC BY-SA 3.0 license is attached as Exhibit D.

29. This license allows anyone to use the work, provided that they, among other requirements:

- a. Include a copy of the Uniform Resource Identifier for the CC BY-SA 3.0;
- b. Provide attribution to the author of the work; and
- c. Provide the Uniform Resource Identifier that the licensor specifies to be included with the work.

**E. Restrictions on the Jeff Tweedy Photo**

30. Larry Philpot provided the following description on the Wikimedia website for the Jeff Tweedy Photo, “Jeff Tweedy performs at Farm Aid.” Philpot also provided the following attribution requirement: “Attribution should be: Photo credit: Larry Philpot, [www.soundstagephotography.com](http://www.soundstagephotography.com).”

**F. Blackbird Production Infringes Philpot's Copyright in the Jeff Tweedy Photo.**

31. Blackbird Production infringed Philpot's copyright in the Jeff Tweedy Photo by publishing, copying, and displaying the Jeff Tweedy Photo on the <https://blackbirdpresents.com/> website at <https://blackbirdpresents.com/jeff-spencer-tweedy-emmylou-harris-keb-mo-joan-osborne-added-to-mavis-75-show/> and [https://3lawrelghd3ng9stnvq36z6n-wpengine.netdna-ssl.com/wp-content/uploads/2014/08/news\\_mavis\\_artists\\_added\\_1-650x300.jpg](https://3lawrelghd3ng9stnvq36z6n-wpengine.netdna-ssl.com/wp-content/uploads/2014/08/news_mavis_artists_added_1-650x300.jpg). A copy of these webpages as they appeared with the Jeff Tweedy Photo is attached as Exhibit E.

32. Blackbird Production did not provide attribution to Philpot when it published the Jeff Tweedy Photo.

33. Blackbird Production did not list or link to Philpot's website, [soundstagephotography.com](http://soundstagephotography.com) when it published the Jeff Tweedy Photo.

34. Philpot discovered these infringements on April 19, 2020.

**G. The Damage Done**

35. Defendant Blackbird Production passed off Philpot's Jeff Tweedy Photo as its own, ignoring Philpot's primary requirement under the Creative Commons license to allow Defendant Blackbird Production to use his copyrighted work—the credit. Philpot has been deprived of the credit for taking the exceptional Jeff Tweedy Photo.

**V.**

**CLAIMS**

**A. Count One: Copyright Infringement**

36. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

37. Defendant Blackbird Production operated and operates the <https://blackbirdpresents.com/> website.



38. Defendant Blackbird Production published, copied, and displayed the Jeff Tweedy Photo at <https://blackbirdpresents.com/jeff-spencer-tweedy-emmylou-harris-keb-mo-joan-osborne-added-to-mavis-75-show/> and [https://3lawre1ghd3ng9stnvq36z6n-wpengine.netdna-ssl.com/wp-content/uploads/2014/08/news\\_mavis\\_artists\\_added\\_1-650x300.jpg](https://3lawre1ghd3ng9stnvq36z6n-wpengine.netdna-ssl.com/wp-content/uploads/2014/08/news_mavis_artists_added_1-650x300.jpg).

39. Defendant's acts are and were performed without the permission, license, or consent of Plaintiff.

40. Defendant acted with willful disregard of the laws protecting Plaintiff's copyrights.

41. Defendant infringed Plaintiff's copyrights in the Jeff Tweedy Photo in violation of 17 U.S.C. § 501.

42. Plaintiff has sustained and will continue to sustain substantial damage in an amount not yet fully ascertainable, including but not limited to damage to his business reputation and goodwill.

43. Plaintiff is informed and believes and thereon alleges that the Defendant has obtained profits recoverable under 17 U.S.C. § 504. Plaintiff will require an accounting from the Defendant of all monies generated from the Jeff Tweedy Photo.

44. In the alternative and at his election, Plaintiff is entitled to seek maximum statutory damages for each work willfully infringed by Defendant in an amount of \$150,000 per work infringed. In the event that the trier of fact does not find that Defendant willfully infringed Plaintiff's copyrights, Plaintiff is entitled to seek maximum statutory damages for each work infringed by Defendant in an amount of \$30,000 per work infringed.

45. Plaintiff has suffered and continues to suffer irreparable harm and damage as a result of the above-described acts. Accordingly, Plaintiff seeks permanent injunctive relief pursuant to 17 U.S.C. § 502, as well as seizure of the Jeff Tweedy Photo.

46. Plaintiff is entitled to recover from the Defendant his attorney's fees and costs of suit, pursuant to 17 U.S.C. § 505.

**VI.**

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

**VII.**

**RELIEF REQUESTED**

WHEREFORE, Plaintiff demands that judgment be entered against Defendant as follows:

1. Pursuant to 17 U.S.C. § 502, that Defendant, its agents, servants, employees, representatives, successors and assigns, and all persons, firms, corporations, or other entities in active concert or participation with Defendant, be permanently enjoined from directly or indirectly infringing the Plaintiff's copyrights in any manner, including generally, but not limited to reproducing, distributing, displaying, performing or making derivatives of any of the Jeff Tweedy Photo;

2. Pursuant to 17 U.S.C. § 504, that Defendant be required to pay actual damages and disgorgement of all profits derived by Defendant from its acts of copyright infringement;

3. That Defendant be required to perform a complete and full accounting of all profits generated by Defendant from the Jeff Tweedy Photo;

4. Pursuant to 17 U.S.C. § 504, that upon Plaintiff's election, Defendant be required to pay statutory damages up to \$150,000 for each work infringed for its acts of copyright infringement, and in the event the factfinder determines that Defendant's infringement was not willful, that Defendant be required to pay statutory damages up to \$30,000 for each work infringed for its acts of copyright infringement;

5. Pursuant to 17 U.S.C. § 505, Defendant be required to pay Plaintiff the costs of this action, prejudgment interest, and reasonable attorney's fees; and

6. Plaintiff be granted all other and further relief to which he is entitled.

Dated: May 29, 2020

Respectfully submitted,

**HUTCHERSON LAW PLLC**

/s/ Kenton J. Hutcherson  
Kenton J. Hutcherson, Esq.  
Pro Hac Vice Pending  
Texas State Bar No. 24050798  
Hutcherson Law PLLC  
3400 Oak Grove Avenue, Suite 350  
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Fax: (214) 443-4210  
Email: kjh@hutchersonlaw.com

**ATTORNEY FOR PLAINTIFF**

# EXHIBIT A



# EXHIBIT B





This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number

Vau 1-164-648

Effective date of  
registration:

May 17, 2013

## Title

Title of Work: All unpublished photos 2008 to May 2013

## Completion/Publication

Year of Completion: 2013

## Author

■ Author: Larry Gene Philpot

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1953

## Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

## Rights and Permissions

Name: Larry Philpot

Email: larry@behindthemusic.net

Telephone: 317-567-1338

Address: 12527 Winding Creek Lane

Indianapolis, IN 46236 United States

## Certification

Name: Larry G. Philpot

Date: May 14, 2013



**Registration #:** VAU001164648

**Service Request #:** 1-935196132



\*0000VAU0011646480101\*

Larry G. Philpot  
12527 Winding Creek Lane  
Indianapolis, IN 46236 United States

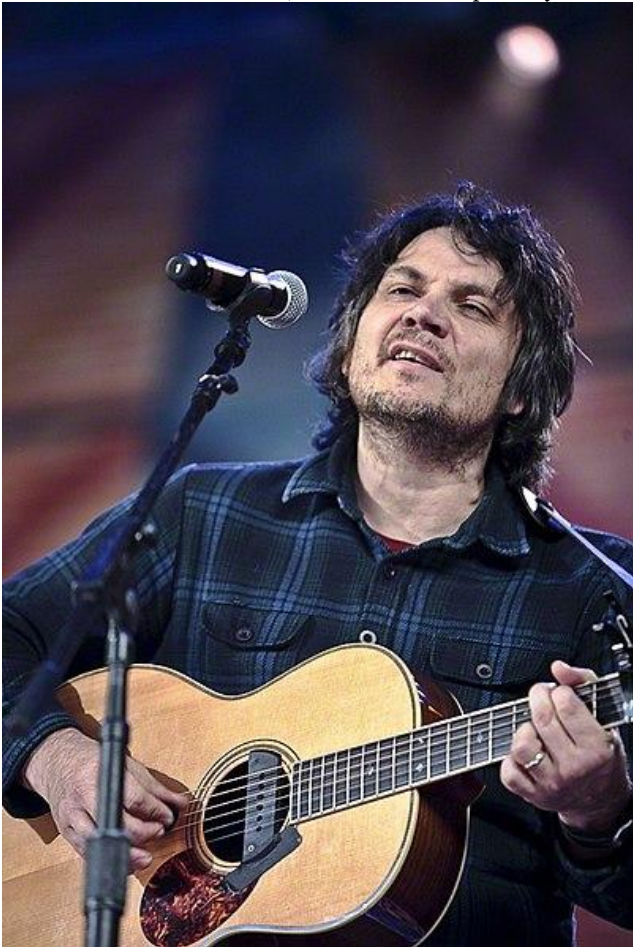


# EXHIBIT C



# File:Jeff Tweedy.jpg

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## Summary

<b>Description</b>	<b>English:</b> Jeff Tweedy performs at Farm Aid, October 2, 2010
<b>Date</b>	2 October 2010, 18:34:55
<b>Source</b>	Own work
<b>Author</b>	Larry Philpot

All photographs are my own work and are copyrighted with the US Copyright Office. Attribution should be Photo Credit: Larry Philpot, [www.soundstagephotography.com](http://www.soundstagephotography.com) .

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current	<b>07:47, 4 October 2013</b>		534 × 800 (407 KB)	<a href="#">Nightshooter</a> (talk   contribs)	User created page with UploadWizard

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- [Category:Jeff Tweedy](#)

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Camera manufacturer	<a href="#">Canon</a>
Camera model	<a href="#">Canon EOS-1Ds Mark III</a>
Author	Larry Philpot

Copyright holder	Copyright, Larry Philpot
Exposure time	1/160 sec (0.00625)
F-number	f/2.8
ISO speed rating	800
Date and time of data generation	18:34, 2 October 2010
Lens focal length	200 mm

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# EXHIBIT D



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# EXHIBIT E

<https://blackbirdpresents.com/jeff-spencer-tweedy- Emmylou-harris-keb-mo-joan-osborne-added-to-mavis-75-show/>

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## JEFF & SPENCER TWEEDY, EMMYLOU HARRIS, KEB' MO' & JOAN OSBORNE ADDED TO MAVIS 75 SHOW



OCTOBER 7, 2014

TAGS: AUDITORIUM THEATRE

BY: ROB RAUFFER



Jeff Tweedy & Spencer Tweedy, Emmylou Harris, Keb' Mo' and Joan Osborne are the latest performers announced as part of the prestigious lineup of artists taking part in I'LL TAKE YOU THERE – CELEBRATING 75 YEARS OF MAVIS STAPLES, a once-in-a-lifetime concert event taping honoring one of the most influential singers of our time. The concert will take place at the Auditorium Theatre in Chicago, IL on November 19.

In addition to the newly announced performers, the concert will feature a lineup of music stars, including: Gregg Allman, Ryan Bingham, Eric Church, Patty Griffin, Glen Hansard, Taj Mahal, Michael McDonald, Buddy Miller, Aaron Neville, Widespread Panic, Grace Potter, Mavis Staples, and Marty Stuart. Staples will take the stage to perform with a number of special guests throughout the night. Additional performers will be announced in the coming weeks.

Tickets are on sale now via [ticketmaster.com](https://www.ticketmaster.com). Tickets are also available at the Auditorium Theatre box office or by phone at [800-745-3000](tel:800-745-3000).

Grammy Award-winner Don Was will serve as music director, leading an all-star band backing the amazing performers who will take the stage at this incredible concert event taping. Keith Wortman is the creator and executive producer of the concert event. Was and Wortman's recent work together includes extraordinary concert

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